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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 EUGENE ALEXANDER DEY,

12 Petitioner,

No. CIV S-03-0883 LKK KJM P

13 vs.

14 M. YARBOROUGH,

15 Respondent.

ORDER

16 _____/
17 Petitioner is a state prison inmate proceeding pro se with a petition for a writ of
18 habeas corpus under 28 U.S.C. § 2254. The petition was denied and judgment was entered on
19 February 19, 2008 and petitioner has timely appealed this judgment. On March 5, 2008,
20 petitioner filed a request to proceed in forma pauperis on appeal and a motion for the
21 appointment of counsel on appeal. The court's records show that petitioner paid the filing fee
22 for this habeas action on May 12, 2003.

23 Rule 24(a) of the Federal Rules of Appellate Procedure provides that a party to a
24 district court action who desires to appeal in forma pauperis on appeal must file a motion in the
25 district court which:
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(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(2). Petitioner has presented an affidavit which shows his inability to pay the fees and costs of appeal. In his March 5, 2008, request for a certificate of appealability, petitioner claimed entitlement to redress and described the issues to be presented on appeal. Petitioner has substantially complied with the requirements of Fed. R. App. P. 24(a). Accordingly, his request to proceed in forma pauperis on appeal will be granted.

Petitioner has also requested the appointment of counsel. There currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the interests of justice would be served by the appointment of counsel at the present time.

IT IS THEREFORE ORDERED that:

1. Petitioner's request to proceed in forma pauperis on appeal (docket no. 35) is granted; and

2. Petitioner's request for the appointment of counsel (docket no. 36) is denied.

DATED: April 11, 2008.



U.S. MAGISTRATE JUDGE